

BELLSOUTH

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Vice President-International

February 1, 2002

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Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

**Re: Request for Section 1377 Comments Concerning Compliance with
Telecommunications Trade Agreements**

Dear Ms. Blue:

On behalf of the BellSouth Corporation, I appreciate the opportunity to submit comments regarding unfair foreign commercial practices in the telecommunications industry pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106).

As indicated by our filing of January 26, 2001 and our subsequent March 30, 2001 update, we continue to appreciate the advocacy role that the US government has performed in advancing open competition in Peru's telecommunications market. Nevertheless, fundamental problems still exist, including a lack of transparency in the regulatory process by OSIPTEL, the regulator, that unnecessarily and unfairly favors the dominant carrier, Telefonica del Peru, which controls about 90 percent of the domestic market.

As before, the lack of transparency in the regulatory process is deeply troubling. Regulations are frequently issued without required public dissemination or comment. Our efforts to obtain information directly from the regulator (as opposed to the newspapers or even our primary competitor) are often rebuffed. The public policy or other rationale for issuance of new regulations or alteration of existing regulations can be unclear or even counterintuitive.

Regulatory conduct has been anti-competitive and arbitrary, including the following illustrative review of the immediate past:

1. Beginning in 1996, BellSouth was forced by OSIPTEL to charge its customers on a per second rounding basis while refusing to modify BellSouth's agreement with Telefonica del Peru, by which BellSouth paid traffic settlements on a per minute rounding basis. This situation was finally modified in July 1999 with an OSIPTEL resolution requiring all traffic settlements to be made on a per second basis. However, OSIPTEL delayed the implementation and then stated the new norm was inapplicable until an additional norm was issued. This situation continued until March 2001, when OSIPTEL finally implemented its own norm.

2. Telefonica unilaterally decided to breach the traffic settlements agreement for traffic coming out of their payphones to force BellSouth to increase the Telefonica share of revenues from public user fees. OSIPTEL refused to take action until BellSouth began a formal complaint against Telefonica, at which point OSIPTEL refused jurisdiction (even though the contract clearly established arbitration before the regulator). As a result, Telefonica retained about US\$15 million from BellSouth for almost two years, before which, from 1998-1999, Telefonica had retained settlements from traffic for some US\$30 million.
3. Similarly, upon lobbying by Telefonica, and without any opportunity for BellSouth to comment, OSIPTEL modified the agreement on settlements of traffic from their payphones to BellSouth's mobile network, modified the Calling Party Pays system with respect to such traffic, and established an interconnection fee. The economic result of OSIPTEL's unilateral measure has been to transfer approximately US\$300,000 per month from BellSouth to Telefonica.
4. Even though mobile telephony is one of the most dynamic and competitive sectors in the country, with four competing firms including BellSouth and a penetration rate greater than landline penetration, OSIPTEL is increasingly preoccupied with the mobile market. Rather than impose price regulations, OSIPTEL should let the market in this competitive sector decide these prices, and focus its limited resources instead on areas where greater attention is required, e.g. Telefonica's anti-competitive behavior as the dominant carrier.

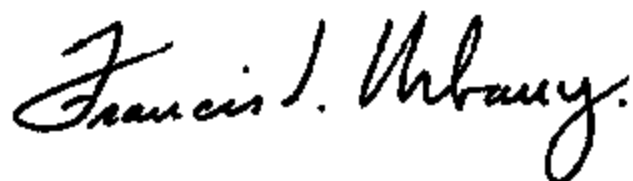
BellSouth continues to believe that Peru is in violation of its WTO commitments to maintain independent, impartial regulation, as well as to maintain competitive safeguards by not making available to all service suppliers on a timely basis the technical and commercial information relevant to provide service. In fact, preliminary results of an investigation of OSIPTEL by Peru's own Congress show that the regulator has not acted in a manner consistent with its mandate to prevent the dominant carrier, Telefonica del Perú, from acting against the interests of consumers, or to promote free and fair competition among competitors.

Under the new Toledo government, a fresh opportunity now exists to prioritize reform of the telecommunications sector as a leading indicator of the government's commitment to competitive practices in a manner distinct from the previous government. The Peruvian government is in the process of nominating a new head regulator to a five-year term, an important signal of the direction the government intends to take. At a time when the United States is ready to offer significantly enhanced, duty-free access to Peruvian products as part of Andean Trade Preferences Act legislation, a prospect that BellSouth supports, it would be appropriate to insist upon a more transparent, pro-competitive telecommunications environment. Enhanced benefits from the United States should be matched by a renewed commitment from Peru to meet pre-existing responsibilities.

We continue to be motivated by the goal of achieving a fully fair and competitive regulatory environment in Peru, and ask for your continued assistance in bringing the Government of Peru into compliance with its obligations under the WTO.

We remain willing at any time to meet with appropriate US government officials to discuss this matter further.

Sincerely,

A handwritten signature in black ink, reading "Francis J. Mahoney". The signature is written in a cursive style with a large, stylized "F" and "M".